DATE: AUGUST 30, 1996

CASE NO: 94-INA-578

In the Matter of

ST. FRANCES DE CHANTAL RC CHURCH
Employer

on behalf of

MARIA STEPIEN
Alien

Before: Huddleston, Jarvis and Vittone
Administrative Law Judges

DONALD B. JARVIS
Administrative Law Judge

DECISION AND ORDER

This case arises from St. Frances De Chantal RC Church's ("Employer") request for review of the denial by a U.S. Department of Labor Certifying Officer ("CO") of alien labor certification. The certification of aliens for permanent employment is governed by section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(5)(A), and Title 20, Part 656 of the Code of Federal Regulations ("C.F.R."). Unless otherwise noted, all regulations cited in this decision are in Title 20.

Under §212(a)(14) of the Act, as amended, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that, at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available; and (2) the employment of the alien will not adversely affect the wages and working conditions of the United States workers similarly employed.

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of 20 C.F.R. Part 656 have been met. These requirements include the

responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other reasonable means in order to make a good faith test of U.S. worker availability.

We base our decision on the record upon which the CO denied certification and the Employer's request for review, as contained in the Appeal File ("AF"), and any written arguments. 20 C.F.R. §656.27(c).

STATEMENT OF THE CASE

On March 12, 1993, Employer filed a Form ETA 750, Application for Alien Labor Certification, with the New York Department of Labor ("NYDOL") on behalf of the Alien, Maria Stepien. The job opportunity was listed as Teacher of Religion. The job duties were described as: "Teach religion in the Polish language to students from kindergarten to the 12th grade. Will prepare the children for first communion and for confirmation, all instruction will be in the Polish language." Employer also called for "Complete knowledge of the Polish Language" as a special requirement. (AF 64).

The job was advertised and the NYDOL referred five applicants to Employer. (AF 22). On January 20, 1994, Employer filed a Report of Recruitment with the NYDOL in which it indicated that none of the applicants had been hired because none was qualified for the job. (AF 40-41). The file was transmitted to the CO. (AF 45).

On April 8, 1994, the CO issued a Notice of Findings ("NOF") in which she proposed to deny the application on the ground that Employer had not supported the foreign language requirement with evidence of business necessity as required by Section 656.21(b)(2). (AF 47-48). Employer was told it could rebut the finding by deleting the Polish Language requirement or by submitting evidence establishing that the foreign language requirement arises from a business necessity. (AF 47). The NOF also required Employer to document the following"

1. The total number of students and the percentage of those who cannot communicate in English. Are other classes, such a Social Studies, Math, etc., also conducted in the Polish language? What provisions are made for students who do not speak Polish? How does the employer handle standardized and/or

required tests (PSAT, SAT, California Achievement Tests, New York State Regents Examinations, etc.) which are not published or normally available in languages other than English?

2. The percentage of teaching time that is dependent upon the language.

3. How absence of the language would adversely impact the school.

4. The percentage of time worker would use the language.

5. Describe how employer has dealt with and handled Polish speaking students previously or is currently handling this segment of student population.

6. Describe how the language problem is handled for other foreign/English speaking students.

7. Any other documentation which will clearly show that fluency in Polish is essential to employer's business.

(AF 46-47).

Employer filed a timely rebuttal. (AF 50). It stated that: (1) The school is a school of religion; (2) Most of the students are recent arrivals from Poland and they have to be taught in the Polish language; (3) The school was created to keep alive in youngsters of Polish ethnicity their ethnic religious culture, traditions, language and history of the Polish saints; (4) The Rev. Eugene Fil had been the teacher of religion until he was transferred back to Poland; and (5) For all of the reasons stated, the Polish language was the quintessence of the job opportunity. Id.

The CO issued a Final Determination on May 18, 1994, in which she denied certification. (AF 53). The CO found that Employer had not provided the specific information required by the NOF and had not documented business necessity. (AF 51-52). The CO also stated that:

> In rebuttal, dated May 6, 1994, the employer states that the school is only a "school of religion", that "most" of the students are recent Polish immigrants, and that "the Polish

> language is the quintessence of the teaching". Employer provides no information concerning percentage of Polish teaching time, does not address how the absence of the language would adversely impact the school, nor how the employer has dealt with and handled Polish speaking students previously or currently (alien is not currently employed per ETA Form 750B). More importantly, employer does not describe how the language problem is handled for other foreign and English speaking students. We note the employer's statement specifically says "most of the students. . . have to be taught in the Polish language", which would indicate there are students who do not speak Polish. (AF 51).

The Employer filed a request for review on June 22, 1994. (AF 66).

DISCUSSION

Section 656.21(b)(2)(i) provides that:

> The job opportunity's requirements, unless adequately documented as arising from business necessity:
>
> . . .
>
> (C) Shall not include requirements for a language other than English.

The NOF's seven specific requests for documentation were related to the issue of whether the Polish language requirement arose from a business necessity. Employer's rebuttal was general in nature and did not respond to these requests. It is well-settled that an employer's failure to provide documentation reasonably requested by the CO will result in denial of labor certification. Eli's Trims, Inc., 94-INA-404 (January 25, 1996); Edward Gerry, 93-INA-467 (June 13, 1994); Bakst International, 89-INA-265 (Mar. 14, 1991); Britt's Antique Importers/Exporters, 90-INA-276 (Dec. 17, 1990); Rainbow Imports, Inc., 88-INA-289 (Oct. 27, 1988).

In the light of Employer's failure to provide the documentation required by the CO, denial of certification should be affirmed.

ORDER

The Certifying Officer's denial of labor certification is affirmed.

For the Panel:

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DONALD B. JARVIS
Administrative Law Judge

DBJ/bg